UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS - FORT WORTH DIVISION

NEW MILLENNIUM CONCEPTS, LTD **Plaintiff,** **V.** **PATRIOT SUPPLY STORE, INC., dba My Patriot Supply, and MATTHEW PARKER, d.b.a. Alexapure, aka Matt Redhawk, and Alexapure, LLC** **Defendants.**	§ § § § § § § § § §	 **Case No. 4:17-cv-248** **DEMAND for JURY TRIAL**

ORIGINAL COMPLAINT for DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF TRADEMARK

COMES NOW New Millennium Concepts, Ltd. ("NMCL"), plaintiff, to file this Original Complaint against Patriot Supply Store, Inc., dba My Patriot Supply ("MPS") and Matt Parker, a.k.a. Matt Redhawk, seeking declaratory judgment that no action by NMCL constitutes an actionable claim based on the Lanham Act, and to seek damages for defamation by Matt Parker and Patriot Supply Store, Inc.

I. PRELIMINARY STATEMENT

1. The parties compete in the sale of gravity-fed water filters, with each publishing comparison literature. MPS sent NMCL a cease-and-desist letter threatening suit against NMCL for Lanham Act violations regarding literature distributed in response to negative statements by defendants, which has resulted in this suit to prove that NMCL is not infringing MPS marks, defaming MPS falsely, or behaving in actionable manner making NMCL subject to suit.

II. PARTIES

2. Plaintiff New Millennium Concepts, Ltd. ("NMCL") is a Texas limited partnership, and may be served through its attorney, Warren Norred, at his office, Norred Law, PLLC, 200 E. Abram, Ste. 300, Arlington, TX 76010.

3. Defendant Patriot Supply Store, Inc. is a Nevada corporation doing business as My Patriot Supply, and operating in Idaho. The Idaho Secretary of State shows its location at 414 Church Street, Suite 200, Sandpoint, ID 83864, and may be served at the address of its registered agent, Steve Whetzel or manager Matthew Parker, at one of the following: 611 N. 3rd Avenue, Sandpoint, ID 83864; 1302 Ontario Street, Sandpoint, ID 83864; 32 Carter Drive, Sagle ID 83860, or wherever either Whetzel or Parker may be found.

4. Defendant Matthew Parker, a.k.a. Matt Redhawk, d.b.a. Alexapure, was a former distributor of NMCL products, currently owns defendant Patriot Supply Store, Inc., and can be reached at 32 Carter Drive, Sagle ID 83860.

5. Defendant Alexapure, LLC is a limited liability company organized in Idaho, and may be served at the address of its registered agent, Steve Whetzel, 1302 Ontario Street, Sandpoint, ID 83864, or Matthew Parker, 32 Carter Drive, Sagle ID 83860, or wherever either Whetzel or Parker[1] can be found.

[1] Matthew Parker is also known as "Matt Redhawk" in social media and advertising. See Exhibit C. In spite of rules requiring physical addresses on state entity documents, he often uses post office boxes to hide his address. The above information is the best available information based on the business entities he uses.

III. JURISDICTION AND VENUE (FEDERAL QUESTION, DIVERSITY, SUPPLEMENTAL JURISDICTION)

6. This Court has subject-matter jurisdiction over the trademark infringement claim under 15 U.S.C. §§ 1051, *et seq*., (the Lanham Act), 28 U.S.C. § 1331 (actions arising under U.S. laws), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress relating to trademarks).

7. This Court has subject-matter jurisdiction over this dispute based on diversity under 28 U.S.C. § 1332, as: a) the amount in dispute exceeds $75,000, and b) the plaintiff is a Texas partnership operating principally in Texas, and c) both defendants are located outside Texas.

8. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over plaintiff's state claims because they are related to its trademark non-infringement and disparagement claims, which are within this Court's original jurisdiction, and these claims form part of the same case under Article III of the United States Constitution.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

IV. FACTS

10. The facts contained herein are supported by several attached exhibits, including: Exhibit 1, a demand letter written from defendant MPS to plaintiff; Exhibit 2, the publication which defendant claims gives it actionable claims for trademark infringement under the Lanham Act and common law violations associated with such claims; and Exhibit 3, an online article quoting defendant Matt Parker, a.k.a. Matt Redhawk[2].

11. Plaintiff is a manufacturer, seller, and wholesale distributor of gravity-fed water filtering apparatus, and has been using the trademark "Berkey" to identify water filter products at least as far back as 2008. NMCL and its principals have been operating in the water filtration business since the 1990s.

12. Defendant is also a seller of water filtering apparatus, and uses the name "Alexapure" as a root for various registered marks since about 2014. Prior to the events of this dispute, in or around 2012, defendant distributed NMCL's products. As such, the defendant has knowledge about NMCL's products, policies, and procedures to the extent they are the same as they were during that time period.

13. In late 2016, plaintiff NMCL learned of claims by defendants' agents regarding water filter comparisons between MPS's Alexapro products and NMCL's Berkey products. NMCL received requests from a number of its distributors inquiring about the differences between the two products.

[2] The online article attached as Exhibit C is authored by Allison Amos, Chief Marketing Officer of Alexapure, LLC, but quotes Matthew Parker, a.k.a. Matt Redhawk.

14. In response to Alexapro claims, NMCL published the Alexapro Dealer Reference ("Reference") to a select group of distributors. Page 6 of that reference is attached as Exhibit 2. The Reference includes statements which defendant MPS believed to be egregious and false, but which NMCL believes are absolutely true, including this discussion by NMCL regarding the Alexapure disclaimer from p. 6:

> ## Disclaimers
>
> **Q:** I read at Water4Patriots, an Alexapure Pro® dealer website, the following disclaimer on their testing page. What can you tell me?
>
> "**Disclaimer:** for proper use of your Alexapure Pro, we recommend using the cleanest fresh water source available (such as your tap water, well water, or if those aren't available, a freshwater creek or stream). **It is unadvisable to use known contaminated water for your own safety as well as the longevity and efficacy of your Alexapure Pro**. Use your Alexapure Pro as directed and change the filter when necessary.
>
> **This product has not been evaluated by the United States Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease. The information provided on this website and on product packaging is for information purposes only, and is not a substitute for professional medical care or advice."*
>
> **A:** This disclaimer clearly indicates that the Alexapure Pro® should **not** be used with contaminated water, which is in direct contradiction to how the Alexapure Pro® is advertised. Some would say this is misleading. If the Alexapure Pro® cannot be used with contaminated water, that severely limits its intended use a water filtration system. In addition, this raises questions about the genuineness of the company as a whole. The disclaimer also calls into question the Alexapure Pro® test results, which claim contaminant removal. Black Berkey® Purification Elements can be used with virtually any water source. In the event of natural disasters and emergencies, when treated water may not be available, a Berkey® system is a true survival tool.

15. The statement referenced above is online at this filing, located at https://secure.water4patriots.com/alexapure-tech-specs.php. These comments were published by NMCL based on its own research on the Alexapure product.

16. At no point has NMCL taken any action that would cause confusion between its products and those of MPS, or retaliated against MPS or other defendants with any false statement relating to the MPS disclaimer, or falsely disparaged MPS products, even though

V. CLAIM 1—DECLARATORY JUDGMENT OF TRADEMARK NON-INFRINGEMENT, 28 U.S.C. § 2201

17. Plaintiff files this claim against MPS for a declaration of rights with respect to federal trademark laws, over which the court is given jurisdiction by 28 U.S.C. §§ 1331 and 1338 (trademark), and 28 U.S.C. § 2201 (declaratory judgment).

18. The dispute is an actual controversy ripe for adjudication based on the "totality of the circumstances" standard, in that the defendants have written a formal cease-and-desist letter threatening suit, with a deadline to respond, and defendant has taken legal action against others on trademark issues, suggesting that MPS's letter threatening imminent suit is more than mere threat.

VI. CLAIM 2—DECLARATORY JUDGMENT OF DEFAMATION AND FALSE ADVERTISING, 28 U.S.C. § 2201

19. Plaintiff files this claim against MPS for a declaration of rights concerning MPS's claims that NMCL is defaming MPS or falsely advertising against MPS, over

which this Court has supplemental jurisdiction through 28 U.S.C. § 1367(a) supplemental jurisdiction and 28 U.S.C. § 2201 (declaratory judgment).

20. While NMCL is content to simply allow the commercial world to determine who makes the better water filter, NMCL is not content to allow MPS to mislead consumers with its claims to superior results on fluoride treatment and other particulars while also defaming NMCL's products and threatening litigation.

21. As stated supra, defendants have alleged that plaintiff's products are dangerous, a flatly false statement, which has caused loss of sales, and for which plaintiff requests damages.

VII. CLAIM 3 - DEFAMATION PER SE

22. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

23. *Elements of the claim*. Pursuant to Section 73.001 of the Texas Civil Practice & Remedies Code, the elements of libel under Texas law include: a) a defamatory statement, b) expressed in writing; c) that tends to injure reputation, which d) exposes one to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation.

24. *Additional elements for "Defamation Per Se"*. Defamatory statements that injure professional or occupational reputations constitute 'defamation per se'; Texas law allows general damages to be presumed in such cases. *Hancock v. Variyam*, 400 S.W.3d 59, 63-68 (Tex. 2013).

25. *MPS defamed NMCL* - based on the above elements, as follows:

a. *Defendants' statements are defamatory*. Agents of MPS have published false statements regarding NMCL's business practices and products, knowing those statements are wrong. The law presumes a statement which is libelous per se defames a person and injures his reputation. *Leyendecker & Assocs., Inc. v. Wechter*, 683 S.W.2d 369, 374 (Tex. 1984).

b. *Defendants' statements were written*. Defendants published these statements online at https://www.intellihub.com/water-filters-which-one-is-best/ and other sites. A copy of the statement in the form it was viewed by Plaintiff is attached as Exhibit 3, with the relevant information highlighted.

c. *Defendants' statements and actions are injuring plaintiff's reputation*. Prior to the publication of the defamatory statement described above, plaintiff enjoyed a reputation as a professional organization providing high-quality water filters. Defendants' statements constitute statutory libel because they tended to injure plaintiff's reputation and expose it to financial injury and impeached its honesty and integrity. TEX. CIV. PRAC. & REM. CODE § 73.001.

d. *Defendants' statements were false*. Statements by MPS, Parker, and Alexapro, LLC as set forth above are false, e.g., "The act of priming the filter is really nothing more than forcing the filter to be broken in so that it can begin to process water. The somewhat dangerous design flaw that we see with filters of this type is the priming requirement."

e. *Defendants' statements were made with malice.* Defendants' behavior in this matter show they want to sell product and make false and defamatory statements with knowledge that they were false or with substantial grounds for knowing that they might be false and with reckless disregard to whether they were true or false.

f. *Plaintiff was damaged as a result of defendants' statement.* As a direct and proximate result of defendants' publication of the defamatory statements, plaintiff's reputation has been injured. Plaintiff has had to employ individuals to take substantial time out of their productive day to address the false statements deliberately spread by MPS and Parker.

26. *Exemplary Damages*. Plaintiff is entitled to exemplary damages from defendant because defendant acted with the malice required to support an award of exemplary damages. Defendant acted with a specific intent to cause injury to plaintiff or conscious indifference to the rights, safety, or welfare of plaintiff with actual, subjective awareness that defendants' conduct involved an extreme degree of risk of harm to plaintiff.

VIII. JURY DEMAND

27. Plaintiff requests trial by jury of all claims.

IX. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully prays that defendants be cited to appear and answer, and that, upon a final hearing of the cause, judgment be entered for the plaintiff against defendants for the damages requested and such other relief to which the plaintiff may be entitled at law or in equity, whether pled or unpled, but including at least:

a) Actual damages;

b) Damages for injury to reputation;

c) Common law damages as determined by trial, including exemplary damages appropriate for defendants' actions constituting defamation per se;

d) Reasonable and necessary attorney fees;

e) Pre- and post-judgment interest to the extent appropriate; and,

f) All other relief to which plaintiff is entitled in law or in equity.

Dated: March 23, 2017

Respectfully submitted,

By: s/Warren V. Norred/
Warren V. Norred, Texas Bar No. 24045094
warren@norredlaw.com
C. Chad Lampe, Texas Bar No. 24045042
chad@norredlaw.com
200 E. Abram Street, Suite 300
Arlington, Texas 76010
Tel. (817) 704-3984, Fax. (817) 524-6686
Counsel for New Millennium Concepts, LTD.

Exhibits attached and incorporated by reference:
1 – MPS's Demand Letter
2 – NMCL's Alexapro Dealer Reference, Excerpt
3 – Comparison Advertisement by Alexapro LLC